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OFFICE OF PETITIONS

In re Application of
Craig Hansen et al.
Application No. 10/616,303
Filed: July 10, 2003
Attorney Docket No. 43876-144

ON PETITION

This is a decision on the renewed petition filed November 19, 2004 under 37 CFR 1.53, requesting that the above-identified application be accorded a filing date of July 10, 2003, with Figures 34D and 34E as described in the specification, as a part of the original disclosure.

On July 10, 2003, the application was filed. However, on October 7, 2003, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Missing Parts indicating amongst other requirements, that the application had been accorded a filing date July 10, 2003 but that Figures 34D and 34E as described in the specification appeared to have been omitted from the application. In response, a petition was filed December 8, 2003 arguing that a complete application was present on July 10, 2003, for filing date purposes. In the December 2003 petition, petitioners pointed to their postcard receipt as evidence that 166 pages of drawings were among the application papers filed on July 10, 2003 and argued that one (1) sheet of drawings containing Figures 34D and 34E as described in the specification were included in that number. That petition was dismissed in a decision mailed November 12, 2004 because petitioners' postcard receipt was itemized by the number of sheets filed not by the Figures. A review of the file also revealed that the number of pages of drawings filed corresponded with the postcard receipt but the review did not show Figures 34D and 34E were included. Further, it was found that the drawing sheets were not numbered and thus it would be impossible to make a determination that the one sheet containing Figures 34D and 34E was included with the application.

With the renewed petition, petitioners cite 37 CFR 1.57 and claim that the omitted drawings were incorporated by reference to parent application 09/922,319 now U.S. Patent No. 6,725,356. 37 CFR 1.57 provides that a proper priority claim under 37 CFR 1.55 or 37 CFR 1.78 can also be considered an incorporation by reference of the prior filed application as to the inadvertently omitted portion of the specification or drawings.

Additionally, MPEP 201.06 (c) states that:

For the incorporation by reference to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or transmittal letter-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application.

Obviously, in view of the incorporation by reference of the prior application, the drawings of Figures 34D-34E are not new matter if it was a part of the disclosure of the prior application. New drawings may be entered by the primary examiner without petition so long as the new drawings contain no new matter. See MPEP § 608.02(a).

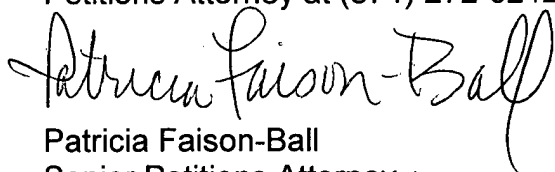
The petition is **GRANTED**.

Based on petitioners' representation that the Application No. 09/922,319 now U.S. Patent No. 6,725,356 was incorporated by reference in the present application, it appears that the Figures 34D-34E were present in the Office on July 10, 2003, albeit in the file of another application, *i.e.*, Application No. 09/922,319.

Since the petition was required to accord the requested filing date, the petition fee of \$130.00 will not be refunded.

The application is being returned to the Office of Initial Patent Examination for a correction of the filing date to July 10, 2003 and using the application papers filed on that date and the application papers filed November 19, 2004 with the instant petition. The application will then be examined and the primary examiner is expected to compare the application papers filed July 10, 2003 to the disclosure of prior application No. 09/922,319 in order to verify that the drawings were in fact, a part of the disclosure of the prior application.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in cursive script, reading "Patricia Faison-Ball". The signature is written in dark ink and is positioned above the printed name and title.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions